APPEAL NO. 93135

On January 12, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. The issue heard was whether the claimant, who is the appellant in this appeal, sustained a head injury from a suicide attempt that was caused by his wilful intention to injure himself, or whether the effects or treatment of a compensable foot injury impaired his ability to resist the impulse to take his own life. The claimant had sustained a compensable injury to his foot on (date of injury). The attempt to take his life, resulting in a head and facial injury, occurred on (date). The hearing officer determined that the carrier did not have liability for the claim because these later injuries resulted from claimant's wilful intention and attempt to injure himself, under the exception to compensability set forth in the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-3.02 (2) (Vernon Supp. 1993) (1989 Act).

The claimant appeals for three primary reasons: that the decision of the hearing officer is so against the great weight and preponderance of the evidence as to be manifestly unjust; that the decision is not supported by legally sufficient evidence; and that the opinion of the hearing officer reflects bias and matters not contained in the record of the hearing. The carrier responds by noting the evidence that supports the decision, and further, that there is no evidence of bias, and the inferences made by the hearing officer are supported by the record.

DECISION

After reviewing the record, we affirm the decision of the hearing officer.

I. FACTS

The claimant, 22 years old at the time of the contested case hearing, sustained an injury on (date of injury), when a one-ton crew cab truck ran over his right foot while he was employed by (employer). He saw the doctor on September 4, 1991, and was diagnosed with a strain and sprain of the right foot. He experienced continuing pain from his foot, although, according to medical records, there were no fractures detected on x-rays. He received pain medication. From the very first medical report in the record, it is noted that claimant had diabetes. Claimant testified that he is dependent on insulin for treatment of his diabetes.

a. Medical history relating to treatment of foot

The claimant continued to have complaints of pain and swelling in his foot. On December 16, 1991, claimant consulted with (Dr. B), whose specialty is indicated in the medical records as surgery of the foot and ankle. According to Dr. B's Initial Medical Report (TWCC 61), MRI and bone scans did not reveal a cause for distress. Dr. B noted that the only abnormality demonstrated was through an EMG/NCV, which showed results "apparently consistent with tarsal tunnel syndrome". The claimant was admitted to Hospital

on December 26, 1991, for a day, for treatment of cellulitis of his right leg.

The claimant had tarsal tunnel release surgery by Dr. B on January 7, 1992. This became infected and claimant was readmitted to the hospital February 3, 1992, for intravenous antibiotic treatment. Notes of a psychiatric consultation by (Dr. S), dated February 3rd, note that claimant was very depressed in mood. However, Dr. S notes also that claimant had no suicidal ideation, and, as part of the mental status examination, that he was not impulsive. Dr. S noted the surgery but his report did not mention the work-related injury. This record indicated that claimant was prescribed Demerol, Valium, Elavil, and Tegretol.

Dr. B's patient progress notes indicate that claimant complained of continuing pain on February 19, 1992 and that he was referred to Clinic. Dr. B sought approval from the carrier for this referral, and his February 28th referral letter indicated that claimant's ongoing problems with his "left foot/ankle" as attributable to what appeared to be a reflex sympathetic dystrophy syndrome (RSD). On March 16th, Dr. B noted that he discussed the fact with claimant that he had RSD syndrome "that was perhaps worse given his juvenile onset diabetes mellitus status."

Dr. B's notes for July 6, 1992, reflected that claimant's complaints of pain continued, and, although appearance of the foot appeared normal, Dr. B recommended a biopsy, irrigation, and debridement of the right foot under epidural anesthetic.

An April 21, 1992 letter to the carrier from Hospital, (Dr. BA) confirmed a diagnosis of RSD for claimant's right foot; a May 14, 1992 letter states that claimant had RSD and severe sympathetic remediated pain of his "left" leg.[1] Dr. BA's May letter notes that "I have told [claimant] that his condition is progressive and that without treatment can result in fairly severe permanent neuromuscular damage to that leg. To date, [claimant] has been reluctant to have any therapeutic or diagnostic nerve blocks and has not shown any form of motivation." A letter from Dr. BA that is undated, but apparently written at the same time to (Rehabilitation facility), indicates urgency in admitting claimant for inpatient intensive physical therapy and psychotherapy. This letter confirms that the right lower limb is affected.

A record of consultation on June 16, 1992, with (Dr. G) notes RSD of the right foot as well as a chronic draining ulcer. Claimant was examined by (Dr. MB), a neurosurgeon with (Medical facility), on July 16, 1992. Succinctly, Dr. MB's report notes impressions of a soft tissue injury to the right foot because of the truck incident, and links to it a probable RSD and possible traumatic peripheral neuropathy. Dr. MB's letter emphatically urges claimant to stop smoking, noting that smoking complicates the evolution of RSD.

[1]The references by Dr. B and Dr. BA to left leg problems appear to be mistakes.

Records from Hospital regarding his inpatient treatment from June 9 through 19, 1992, indicate that claimant's diabetes was poorly controlled. Hyperbaric oxygen treatment for his leg was undertaken, to be continued on an outpatient basis.

Claimant's next significant medical event was a severe gunshot wound to the right temple area caused by claimant's suicide attempt on (date). This resulted in loss of his right eye and damage to his right face, although claimant escaped brain damage.

b. Claimant's testimony regarding his foot injury and later suicide attempt

The claimant testified that his foot pain never went away and got worse with treatment. He described it as a burning or lightning feeling. He stated that he had trouble sleeping caused by the pain. He said that he could not work following the accident, although he stated he briefly assisted a friend with a business tying fishing lures. He agreed that he had an "incident" as an adolescent in which he took an overdose of antibiotics that he stated was triggered by the onset of his diabetes along with his parents' marital problems. Claimant testified to being close to his grandmother, with whom he lived. He was also close to his parents and visited them on a weekly basis. Claimant stated that his parents moved to Central Texas around July 4th and he was unable to see them as often. He denied that this caused him distress.

The claimant stated that after his injury, he met and courted (Ms. V), to whom he became engaged to marry. A sworn witness statement in the record from RR stated that she observed claimant dancing with Ms. V in November 1991, without apparent discomfort. Claimant said that his first wedding date in February 1992 was postponed to October because of his leg. Thereafter, he stated that he heard that Ms. V was dating someone else. Claimant said the engagement with Ms. V was broken off at the end of July 1992, and denied that this caused him any distress. He stated he was "in ways" relieved, although it "did hurt some." He stated that the breakup was no surprise and he had known the week before it was coming.

Claimant testified that around the time preceding his suicide attempt, he was drinking a twelve pack of beer a day. He agreed that alcohol was bad for diabetes and the two did not mix. Claimant stated that alcohol had the effect of relieving his foot pain. He agreed that doctors had told him alcohol would be a problem for someone with diabetes. He testified that alcohol could raise his blood sugar. He stated that he was on no prescription drugs whatsoever on (date), except for insulin, and the decision had been made by his doctors in June to remove him from pain medication.

On August 10th, claimant spent most of the day at his grandmother's business. He left around 3:30 p.m., filled a prescription for insulin (he stated his next injection was due

around 5:30 p.m.), bought some beer and went home. Claimant stated he drank three beers. He stated that during this time, his foot hurt and the pain was unrelieved even though he put ice on his foot. He then spoke with Ms. V on the telephone. Ms. V indicated she still wanted to be friends, and claimant stated he would not answer her about that. When claimant asked Ms. V to pay him money she owed him, she replied that he was an "asshole" and would not get his money. Claimant stated that the conversation ended, and 15-20 minutes later he took a pistol he kept beneath his pillow, aimed it at his right temple, and shot himself. He stated that this occurred prior to his next insulin dose. Claimant also stated he was aware that the gun could kill him, but that he was unable to stop his arm, that it was like there was no control. He testified that less than thirty seconds passed from the time he removed the gun to the time he shot himself. Claimant testified, when asked about his thoughts as he lifted the gun to his eye, that he was thinking nothing, and also that he was thinking of trying to stop. After the incident, claimant dialed "911" for assistance.

The claimant's grandmother, (Ms. J), testified that claimant had no depression following his teenage overdose incident up to the date of his foot accident, but did thereafter. She stated that claimant's behavior, based upon her observation, would sometimes be influenced when his blood sugar was high, although she did not describe how.

c. Claimant's medical records after (date).

Notes signed by (Dr. D) for claimant's admission at Hospital for treatment of his gunshot wound are extensive. Pertinent to this claim are notes that a psychiatric consult was called, and "after examination and evaluation of patient's records and talking to family members, a diagnosis of organic mood disorder secondary to insulin dependent diabetes or alcohol versus a major depressive disorder needed to be delineated." Dr. D noted that by August 14th, patient was reported as not suicidal at that time, and that "a clear psychiatric diagnosis could not be made because of overlying medical problems." The record indicated that on admission, claimant's "plasma ethanol level" was "23 mg/dl."[2]

An August 12, 1992 psychiatric consult note states that claimant's mother said he had been more depressed since his work-related injury. These notes also attribute to the claimant's mother an indication that the breakup with his fiance led to a drinking binge. Other notes dated that day indicate claimant's expressed frustration with his chronic leg pain, and opine that there could be several factors, in no particular order, underlying his suicidal impulse. These are noted as increased alcohol intake, pain, his postoperative situation, organic mood disorder, major depression, and out of control diabetes. The notes also indicate that claimant's finance broke up with him, and that claimant denied this had

[2] Although carrier's attorney asked claimant if he knew that the hospital said he was "intoxicated" following his suicide attempt, and claimant answered "yes", carrier entered nothing else in the record regarding whether claimant was, for purposes of Article 8308-3.02(1), in a state of intoxication at the time of his injury.

anything to do with his depression or suicide attempt.

A short November 20, 1992 letter by Dr. S, the psychiatrist, directed to claimant's attorney, stated that he was of the opinion that claimant's foot injury, coupled with subsequent medical treatment and pain, caused claimant to "become so deranged that he was compelled to take his own life through an uncontrollable impulse." Dr. S further states that this attempt was not caused by wilful or voluntary intent. The letter does not indicate when Dr. S's last treatment of claimant occurred, nor assess what, if any effect, other factors may have had on claimant's action.

A two-page, single-spaced December 18, 1992 psychological evaluation by (Dr. F), indicates, among other things, that claimant's personality profile was typical of patients presenting "as physically ill but whose chronic complaints are not substantiated by medical examination." He stated that claimant had a proclivity to utilize ego defense mechanisms of repression and denial. Dr. F said that, had it not been for the injury, that he felt that claimant would be unlikely to be depressed "at the present time." His summary of the paragraph analyzing the effect of the injury on claimant's depression ends: "[i]n other words, while I think that the injury set off [claimant's] current depression, his pre-existing personality was such that he was not an especially good candidate for making a successful, positive adjustment to the injury which occurred." The letter does not mention at all other factors noted in claimant's admission history relating to treatment of his gunshot wound.

II. Compensability of suicide injuries in Texas

The exception set forth in the 1989 Act, Article 8308-3.02(2) existed in the previous workers' compensation statute. TEX. REV. CIV. STAT. ANN. art. 8306, §1. We have previously ruled that the carrier has the burden of proving facts that raise the exceptions set forth in Article 8308-3.02, but then the burden shifts to the claimant to prove that the exception does not apply. Texas Workers' Compensation Commission Appeal No. 91047, decided November 20, 1991. In this case, there was sufficient evidence of a self-inflicted gunshot wound to shift the burden to the claimant to prove that Article 8308-3.02(2) did not apply.

The guiding Texas case regarding the compensability of suicide injuries is Saunders v. Texas Employers Insurance Ass'n, 526 S.W.2d 515 (Tex. 1975). The Texas Supreme Court considered whether a suicide could be considered to have occurred in the course and scope of employment when it was contended that the effects of a compensable injury led to the suicide. The Supreme Court held that if the effects of an injury were such that derangement of the claimant's mind resulted and effectively impaired the injured employee's ability to resist the impulse for self-destruction, then the suicide, even though a conscious act, could not be termed "wilful," for purposes of the excepting the carrier from liability. The Supreme Court specifically stated that the criteria to be followed in assessing whether the

record established sufficient mental derangement, causally related to the original injury, would be that the results of the injury resulted in the employee becoming "dominated by a derangement of the mind" that impaired the ability to resist the impulse to self-destruction, and that such derangement need not only be organic, but could include such afflictions as deep depressive anxiety reactions. In the Saunders case, the court noted as significant the fact that the record evidenced substantial alteration of the deceased's mind through pain relieving drugs, and that there was further evidence that suicidal tendencies could be a side effect of one of the drugs taken by the deceased. This is the type of evidence that persuaded the court to reverse and remand the case.

After reviewing the case before us, we cannot agree with appellant that the evidence in support of the hearing officer's decision is not sufficient, factually or legally, to support his decision. As we read the Saunders case, there must not only be a state of mind at the time of the self-destructive act that amounts to "derangement," but that such must also be "causally related to the original injury." Saunders, at pg. 517. Here, there was evidence on both sides of this question to be weighed by the hearing officer. The hearing officer appears to have considered that pain from the injury had persisted for nearly a year, which the uncontroverted evidence from the claimant and medical records indicates caused no suicidal impulse prior to the late afternoon of (date) and the telephone conversation with claimant's former fiancee. Even if the facts could be argued to support that claimant was in a temporary state of "derangement," there was sufficient evidence to connect that status, not to the pain with which claimant had lived, and which he stated was usually relieved by alcohol, but to his emotions concerning the breakup with his fiancee, which the hearing officer could conclude were freshly exacerbated by the telephone call.

The hearing officer could have determined, both from claimant's testimony in which he eventually admitted some hurt, as well as Dr. F's opinion that claimant manifested repression and denial as ego defense mechanisms, that the phone call with claimant's former fiancee, and not the effects of the work-related injury, triggered a wilful act of self-destruction. Claimant was not on pain medication on (date). The appeal suggests that claimant's suicide attempt was an easily foreseeable consequence of his pain, but counter to this argument would be the countervailing medical evidence indicating that none of claimant's doctors who treated his foot and leg, including Dr. S in February 1992, was apparently able to foresee the (date) incident.

Regarding the argument that claimant's testimony about his state of mind on (date), is largely unrebutted, we would note that the trier of fact is not bound to accept a claimant's testimony at face value, even if not specifically contradicted by other evidence. Bullard v. Universal Underwriters' Insurance Co., 609 S.W.2d 621 (Tex. Civ. App.- Amarillo 1980, no writ).

Because we do not view the alcohol/diabetes connection as critical to resolution of

the applicability of the exception raised in this case, we cannot agree that the hearing officer's observations regarding the "well-known" relationship between alcohol and diabetes indicate bias or reversible error. In any case, claimant himself testified to the inadvisability of his consumption of alcoholic beverages. The record as a whole and the decision do not indicate an unfair bias against the claimant. As the hearing officer noted, the plight of claimant in this case is worthy of compassion. Nevertheless, the manifest injustice that will compel reversal of a decision cannot be based only on the unfortunate plight of the claimant, but upon evaluation of the evidence in light of the Saunders case and applicable statutes.

Based upon such analysis, we affirm the hearing officer's decision.

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Susan M. Kelley
Appeals Judge

CONCUR:

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

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Philip O'Neill
Appeals Judge